

**United States Bankruptcy Court  
Central District of California  
Santa Ana  
Judge Theodor Albert, Presiding  
Courtroom 5B Calendar**

**Monday, November 14, 2016**

**Hearing Room**

**5B**

10:00 AM

**8:12-23704 Tung Q Ngo**

**Chapter 7**

Adv#: 8:14-01104 Wilson v. Ngo et al

**#1.00** Defendants' Motion for Judgment On The Pleadings

Docket 131

**\*\*\* VACATED \*\*\* REASON: THIS MATTER HAS BEEN RE-SCHEDULED FOR 2:30 P.M.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
--------------------------

**Debtor(s):**

Tung Q Ngo

Represented By  
Vincent Renda

**Defendant(s):**

Lynda-Trang Dai L Ngo

Represented By  
Vincent Renda

Tung Q Ngo

Represented By  
Vincent Renda

**Joint Debtor(s):**

Lynda-Trang Dai L Ngo

Represented By  
Vincent Renda

**Plaintiff(s):**

Melissa L. Wilson

Represented By  
Alex L Benedict

**Trustee(s):**

John M Wolfe (TR)

Pro Se

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**Chapter 7**

Adv#: 8:14-01104 Wilson v. Ngo et al

**#2.00** Motion To Adjudicate Bifurcated Issues

Docket 127

**\*\*\* VACATED \*\*\* REASON: THIS MATTER HAS BEEN RE-SCHEDULED FOR 2:30 P.M.**

**Tentative Ruling:**

- NONE LISTED -

<b>Party Information</b>
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**Debtor(s):**

Tung Q Ngo

Represented By  
Vincent Renda

**Defendant(s):**

Lynda-Trang Dai L Ngo

Represented By  
Vincent Renda

Tung Q Ngo

Represented By  
Vincent Renda

**Joint Debtor(s):**

Lynda-Trang Dai L Ngo

Represented By  
Vincent Renda

**Plaintiff(s):**

Melissa L. Wilson

Represented By  
Alex L Benedict

**Trustee(s):**

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**8:12-23704 Tung Q Ngo**

**Chapter 7**

Adv#: 8:14-01104 Wilson v. Ngo et al

**#3.00** TRIAL RE: Creditor's Complaint for the Revocation of Discharge Order Pursuant to 11 USC Sections 727(d)(1) and 727(d)(2) (set at status conference hearing held 7-23-15) (day 1) (cont'd from 4-21-16 per order granting stip. to cont. trial entered 4-14-16)

Docket 1

**\*\*\* VACATED \*\*\* REASON: THIS MATTER HAS BEEN RE-SCHEDULED TO 2:30 P.M.**

**Tentative Ruling:**

Tentative for 7/23/15:

The court is unclear why the parties have been unable to file a *joint* pretrial stipulation. Also, why is there no report of the mediation? No tentative.

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Tentative for 4/30/15:

The court is unclear why the parties have been unable to file a *joint* pretrial stipulation. Also, why is there no report of the mediation? No tentative.

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Tentative for 1/8/15:

In view of the unfinished discovery issues, and the apparent non-opposition to further continuance, the Pre-Trial Conference is continued to April 30, 2015 at 10:00 a.m. Would appointment of a mediator assist?

-----

Tentative for 6/2/14:

Deadline for completing discovery: November 30, 2014  
Last date for filing pre-trial motions: December 15, 2014  
Pre-trial conference on: January 8, 2015 at 10:00 a.m.  
Joint pre-trial order due per local rules.

<b>Party Information</b>
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**CONT... Tung Q Ngo**

**Chapter 7**

**Debtor(s):**

Tung Q Ngo

Represented By  
James D Hornbuckle  
Vincent Renda

**Defendant(s):**

Lynda-Trang Dai L Ngo

Represented By  
Vincent Renda

Tung Q Ngo

Represented By  
Vincent Renda

**Joint Debtor(s):**

Lynda-Trang Dai L Ngo

Represented By  
James D Hornbuckle  
Vincent Renda

**Plaintiff(s):**

Melissa L. Wilson

Represented By  
Alex L Benedict

**Trustee(s):**

John M Wolfe (TR)

Pro Se

John M Wolfe (TR)

Pro Se

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se

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**8:12-23704 Tung Q Ngo**

**Chapter 7**

Adv#: 8:14-01104 Wilson v. Ngo et al

**#4.00 Defendants' Motion for Judgment On The Pleadings**

Docket 131

**Tentative Ruling:**

This is the Rule 12(c) Motion for Judgment on the Pleadings filed by the defendants. Judgment on the pleadings is proper when the moving party clearly establishes that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d 1542, 1550 (9th Cir. 1989). A 12(c) motion is functionally identical to a 12(b)(6) motion. *Lonberg. v. City of Riverside*, 300 F.Supp.2d 942, 945 (C.D. Cal. 2004). In a 12(b)(6) motion, all allegations are taken as true and construed in a light most favorable to the plaintiff. *SmileCare Dental Grp. V. Delta. Dental Plan of Cal., Inc.*, 88 F.3d 780, 782-783 (9th Cir.1996).

As the court reads the motion, two theories are advanced. First, that the motion should be granted because Plaintiff was late in the exhibits to declarations which are required under the court's posted trial guidelines to be filed not later than 30 days before trial. This is hardly a basis for granting judgment on the pleadings. It is distressing and could under proper circumstances support a sanctions order. But it is not grounds for an ultimate sanction like judgment on the pleadings. This is particularly so in this case since it is alleged that the missing documents have in fact been produced before and so are not a surprise.

Second, defendants argue that Plaintiff is chargeable with knowledge of certain facts amounting to alleged fraud prior to the discharge and therefore she fails the requirement under §727(d)(1) that the party requesting revocation have no knowledge until after the granting of the discharge. For good measure, Defendants throw in that the Plaintiff's allegations are soundly refuted in their own declaration. The problem here, of course, is that this is a factual dispute and factual questions

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**Tung Q Ngo**

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cannot be decided in such a summary proceeding. Benefits of the doubt are resolved in favor of the Plaintiff on 12(c) motions, as the above authorities hold.

*Deny*

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**Defendant(s):**

Lynda-Trang Dai L Ngo

Represented By  
Vincent Renda

Tung Q Ngo

Represented By  
Vincent Renda

**Joint Debtor(s):**

Lynda-Trang Dai L Ngo

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Vincent Renda

**Plaintiff(s):**

Melissa L. Wilson

Represented By  
Alex L Benedict

**Trustee(s):**

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Adv#: 8:14-01104 Wilson v. Ngo et al

**#5.00 Motion To Adjudicate Bifurcated Issues**

Docket 127

**Tentative Ruling:**

This is Plaintiff's Motion to Adjudicate Bifurcated Issues. The Motion is being heard in conjunction with Tung Ngo and Lynda-Trang Dai L. Ngo's (the "Defendants") Motion for Judgment on the Pleadings.

Plaintiff originally filed a State Court action against the Defendants for damages based on losses sustained from alleged fraudulent conduct relating to a real estate transaction. The Defendants filed an initial Chapter 7 that was dismissed, but they refiled and were granted discharge in the second bankruptcy. Plaintiff filed a motion to reopen, and then an amended motion to reopen to bring this adversary proceeding. Plaintiff seeks revocation of discharge under §727(d)(1). The Court granted a Bifurcation Motion requiring a determination that: (1) Plaintiff had reason to know, or had knowledge of her allegations prior to Defendants' discharge and that her legal counsel was on notice in the underlying Chapter 7 proceeding and; (2) that Plaintiff's allegations do not include any specific property acquisitions or transfers by the Defendants subsequent to the underlying Chapter 7 proceeding. These issues were to be adjudicated prior to any trial being conducted pursuant to §727(d)(1) and §727(d)(2). Plaintiff only recently filed (August 22, 2016) her Motion to Adjudicate Bifurcated Issues. She has conceded that no evidence supports allegations sufficient to satisfy the requirements of §727(d)(2) and so that portion of the Complaint will be adjudicated for the Defendants.

This remaining dispute is simple. Plaintiff argues she never received notice of the bankruptcy petition until after discharge was granted and therefore would not have had reason to know or have knowledge of her allegations prior to discharge, qualifying her as a plaintiff under §727(d)(1). Defendants argue Plaintiff indeed had

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notice of the petition filing and was fully aware or could have obtained more information of any fraud allegations prior to discharge.

Plaintiff asserts she was first informed of the second petition via the State Court trial two weeks after discharge was already granted. Additionally, neither Plaintiff nor her counsel was on the mailing list of those served with notice of the first filing. See Motion Exh. "A."

Plaintiff refers to Exhibit "B" to prove that neither she nor her counsel received a copy of the second filing nor any notice of the second filing as a result of notice being sent to an incorrect/incomplete address. Exhibit "B" is not attached to the Motion. But a review of the petition's master mailing list confirms Plaintiff's argument. The address for Plaintiff is listed as: Melissa Wilson c/o Law Offices of Orloff & Associates, 8402 Florence Avenue, Downey, CA 90240. However, counsel's actual mailing address is Law Offices of Orloff & Associates, 8402 Florence Avenue, **Suite B1**, Downey, CA 90240. The difference between the two addresses is the inclusion of Mr. Orloff's office suite number. So, any presumption of actual receipt of this notice must fail because it is incomplete.

"'Reasonable notice' sufficient to charge the recipient and bind his rights is defined by the Supreme Court as 'notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The court must look at the totality of circumstances in determining whether notice was reasonable. *People ex rel. Hartigan v. Peters*, 871 F.2d 1336, 1340 (7th Cir. 1989). Neither Plaintiff nor her counsel would have any reason to ignore notice given or to otherwise refrain from participating in the bankruptcy proceeding, given the amount of the claim at stake and the fact the Plaintiff has been prosecuting the case since 2010. It is not reasonable to charge them with notice ostensibly sent to an incomplete address, absent other circumstances that might impute notice. No such circumstances are articulated here.

Defendants additionally argue Plaintiff could have done more discovery prior



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to expiration of the bar date and that she was put on notice of facts comprising the alleged fraud. But exactly what these facts were is not articulated. Moreover, it is not persuasive to argue that a plaintiff could have done more discovery. That is not the standard. One supposes we could all have done better, but the standard is actual knowledge or at least strong reason to know. There just is no indication of this and the court sees no reason to disbelieve the declarations of the Plaintiff and Mr. Orloff.

*Grant*

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**Chapter 7**

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Vincent Renda

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**Plaintiff(s):**

Melissa L. Wilson

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**Trustee(s):**

John M Wolfe (TR)

Pro Se

John M Wolfe (TR)

Pro Se

**U.S. Trustee(s):**

United States Trustee (SA)

Pro Se